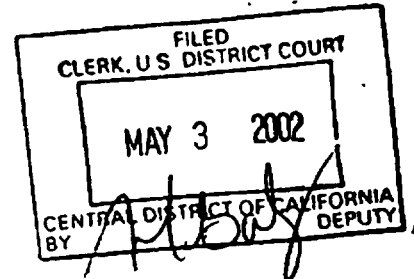


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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

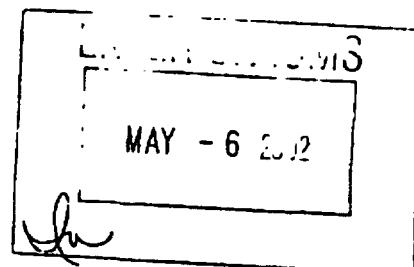
UNITED STATES OF AMERICA
and STATE OF CALIFORNIA
DEPARTMENT OF TOXIC
SUBSTANCES CONTROL,
Plaintiffs,

v.

J.H. MITCHELL & SONS
DISTRIBUTORS, INC., and
SCREWMATIC, INC.,

Defendants.

Civil No. 02-03009 CAS (RZx)
CONSENT DECREE



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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of California Department of Toxic Substances Control ("DTSC") filed a joint complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973.

B. The United States and DTSC in their complaint seek, inter alia: (1) reimbursement of costs incurred by EPA, the United States Department of Justice, and DTSC for response actions at the Baldwin Park Operable Unit of the San Gabriel Valley Superfund Sites, Areas 1-4, in Los Angeles County, California ("the BPOU Area"), together with accrued interest; and (2) performance of studies and response work by the defendants at the BPOU Area consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. The United States has requested and reviewed Financial Information from J.H. Mitchell & Sons Distributors, Inc., and Screwmatic, Inc. (the "Settling Defendants") to determine whether each of the Settling Defendants is financially able to pay response costs incurred and to be incurred at the BPOU Area. Based upon this Financial Information, the United States has determined that the Settling Defendants are unable to pay full allocated shares of response costs incurred and to be incurred at the BPOU Area, and are able to pay no more than the amounts respectively specified in Section VI.

D. The Settling Defendants do not admit any liability arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the BPOU Area

1 constitutes an imminent or substantial endangerment to the public health or welfare
2 or the environment.

3 E. The United States, DTSC, and the Settling Defendants agree, and the
4 Court by entering this Consent Decree finds, that this Consent Decree has been
5 negotiated by the Parties in good faith, that settlement of this matter will avoid
6 prolonged and complicated litigation between the Parties, and that this Consent
7 Decree is fair, reasonable, and in the public interest.

8 NOW, THEREFORE, with the consent of the Parties to this Decree, it is hereby
9 ORDERED, ADJUDGED, AND DECREED:

10 **II. JURISDICTION**

11 1. This Court has jurisdiction over the subject matter of this action
12 pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 6973(a), 9606, 9607,
13 and 9613(b). This Court also has personal jurisdiction over the Settling
14 Defendants. Venue is proper in this District pursuant to 42 U.S.C. § 9613(b) and
15 28 U.S.C. § 1391(b) and (c). Solely for the purposes of this Consent Decree and
16 the underlying complaint, Settling Defendants waive all objections and defenses
17 that they may have to jurisdiction of the Court or to venue in this District. The
18 Settling Defendants shall not challenge the terms of this Consent Decree or this
19 Court's jurisdiction to enter and enforce this Consent Decree.

20 **III. PARTIES BOUND**

21 2. This Consent Decree applies to and is binding upon the following
22 parties: the United States; DTSC; and the Settling Defendants and their successors
23 and assigns. Any change in ownership or corporate status of a Settling Defendant
24 including, but not limited to, any transfer of assets or real or personal property,
25 shall in no way alter such Settling Defendant's responsibilities under this Consent
26

1 Decree.

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3 **IV. DEFINITIONS**

4 3. Unless otherwise expressly provided herein, terms used in this Consent
5 Decree which are defined in CERCLA or in regulations promulgated under
6 CERCLA shall have the meaning assigned to them in CERCLA or in such
7 regulations. Whenever terms listed below are used in this Consent Decree or in the
8 appendices attached hereto and incorporated hereunder, the following definitions
9 shall apply:

10 "BPOU Area" shall mean the Baldwin Park Operable Unit of the San Gabriel
11 Valley Superfund Sites, Areas 1-4, in and near the cities of Azusa, Irwindale, and
12 Baldwin Park, in Los Angeles County, California, and depicted generally on the map
13 attached as Appendix A.

14 "CERCLA" shall mean the Comprehensive Environmental Response,
15 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq.

16 "Certification of Completion" shall mean EPA's written determination that the
17 Remedial Action has been performed and that the performance standards have been
18 achieved.

19 "Consent Decree" or "Decree" shall mean this Decree and all appendices
20 attached hereto (listed in Paragraph 40). In the event of conflict between this Decree
21 and any appendix, this Decree shall control.

22 "Day" shall mean a calendar day unless expressly stated to be a working day.
23 "Working day" shall mean a day other than a Saturday, Sunday, or federal holiday.
24 In computing any period of time under this Consent Decree, where the last day
25 would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the
26 close of business of the next working day.

1 "DOJ" shall mean the United States Department of Justice, and any successor
2 departments, agencies or instrumentalities of the United States.

3 "DTSC" shall mean the California Department of Toxic Substances Control
4 and any successor departments or agencies of DTSC.

5 "DTSC Response Costs" shall mean all costs, including, but not limited to,
6 direct and indirect costs that DTSC has incurred at or in connection with the BPOU
7 Area prior to the entry of this Consent Decree, and all future costs (including, but not
8 limited to, direct and indirect costs) related to the implementation or oversight of the
9 Work, that DTSC will incur at or in connection with the BPOU Area.

10 "EPA" shall mean the United States Environmental Protection Agency, and
11 any successor departments, agencies or instrumentalities of the United States.

12 "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance
13 Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

14 "Explanation of Significant Differences" or "ESD" shall mean the Explanation
15 of Significant Differences relating to the BPOU Area issued by EPA in May 1999.
16 The ESD is attached as Appendix D.

17 "Financial Information" shall mean those financial documents identified in
18 Appendix B.

19 "Interest" shall mean interest at the rate specified for interest on investments
20 of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
21 compounded annually on October 1 of each year, in accordance with 42 U.S.C.
22 § 9607(a).

23 "Paragraph" shall mean a portion of this Consent Decree identified by an
24 Arabic numeral or an upper or lower case letter.

25 "Parties" shall mean the United States, DTSC, and the Settling Defendants.

26 "Plaintiffs" shall mean the United States and DTSC.

1 "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C.
2 § 6901 et seq. (also known as the Resource Conservation and Recovery Act).

3 "Record of Decision" or "ROD" shall mean the EPA Record of Decision and
4 all attachments thereto, relating to the interim remedy for the BPOU Area and signed
5 by the delegate of the Regional Administrator, EPA Region 9, on March 31, 1994.
6 The ROD is attached as Appendix C.

7 "Remedial Action" shall mean those activities, except for Operation and
8 Maintenance, undertaken to implement the ROD, as supplemented by the ESD.

9 "Response Costs" shall mean all past costs, including, but not limited to, direct
10 and indirect costs, that the United States has incurred at or in connection with the
11 BPOU Area prior to the entry of this Consent Decree, and all future costs (including,
12 but not limited to, direct and indirect costs) related to the implementation or
13 oversight of the Work, that the United States will incur at or in connection with the
14 BPOU Area.

15 "Section" shall mean a portion of this Consent Decree identified by a Roman
16 numeral.

17 "Settling Defendants" shall mean J.H. Mitchell & Sons Distributors, Inc., and
18 Screwmatic, Inc.

19 "Site" shall mean the San Gabriel Valley Superfund Sites, Areas 1- 4, in Los
20 Angeles County, California.

21 "United States" shall mean the United States of America, including its
22 departments, agencies and instrumentalities.

23 "Work" shall mean all activities required to be performed to implement the
24 ROD, as supplemented by the ESD, or to oversee the implementation of the ROD,
25 as supplemented by the ESD, at or in connection with the BPOU Area.
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V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objectives of the Parties, as more precisely described in the terms of this Consent Decree, are:

a. To reach a settlement among the Parties with respect to the BPOU Area that allows each of the Settling Defendants to make a cash payment to resolve its alleged civil liability under CERCLA Sections 106 and 107, 42 U.S.C. §§ 9606, 9607, and RCRA Section 7003, 42 U.S.C. § 6973, for response actions and for response costs related to response actions incurred and to be incurred at or in connection with the BPOU Area, as provided in the Covenants Not to Sue by Plaintiffs set forth in Section VIII and the Reservations of Rights set forth in Section IX of this Decree;

b. To resolve the claims of Settling Defendants that could have been asserted against the United States and DTSC with regard to the BPOU Area; and

c. To provide for contribution protection for the Parties with respect to matters addressed in this Consent Decree, pursuant to Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

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VI. PAYMENT OF RESPONSE COSTS

5. Within 30 days of the effective date of this Consent Decree, J.H. Mitchell & Sons Distributors, Inc. shall pay to EPA \$516,000 in the manner described in this Section.

6. Within 30 days of the effective date of this Consent Decree, Screwmatic, Inc. shall pay to EPA \$860,000 in the manner described in this Section.

7. Settling Defendants' respective payments shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number

1 2001 V02670, the EPA Region and Site Spill Number 0927, and DOJ Case Number
2 90-11-2-354. Settling Defendants' respective payments shall be made in accordance
3 with instructions provided to Settling Defendants by the Financial Litigation Unit
4 of the U.S. Attorney's Office in the Central District of California following lodging
5 of the Consent Decree.

6 8. At the time of payment, Settling Defendants shall send copies of the
7 EFT confirmation to the United States as provided in Section XV (Notices and
8 Submissions), the EPA Project Coordinator, and the Superfund Accounting Office
9 of EPA Region IX.

10 9. The total amounts to be paid pursuant to Paragraphs 5 and 6 shall be
11 deposited in the Site 0927 San Gabriel Valley/Baldwin Park Special Account within
12 the EPA Hazardous Substance Superfund to be retained and used to conduct or
13 finance response actions at or in connection with the BPOU Area, or to be
14 transferred by EPA to the EPA Hazardous Substance Superfund.

15 10. Within 30 days of the effective date of this Consent Decree, J.H.
16 Mitchell & Sons Distributors, Inc. shall pay to DTSC \$84,000 in the form of a
17 certified check or checks made payable to Cashier, California Department of Toxic
18 Substances Control, and bearing on its face the docket number of this proceeding.

19 11. Within 30 days of the effective date of this Consent Decree,
20 Screwmatic, Inc. shall pay to DTSC \$140,000 in the form of a certified check or
21 checks made payable to Cashier, California Department of Toxic Substances
22 Control, and bearing on its face the docket number of this proceeding.

23 12. The Settling Defendants shall send their respective certified check(s),
24 along with a transmittal letter referencing the Baldwin Park Operable Unit, San
25 Gabriel Valley Superfund Sites, Project Nos. 300133, 300345, 300349, and 300350
26 to:

1 Department of Toxic Substances Control
2 Accounting/Cashier
3 1001 I Street, 4th Floor
4 P.O. Box 806
5 Sacramento, CA 95812-0806

6 **VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT**

7 **DECREE**

8 13. Interest on Late Payments. If either of the Settling Defendants fails to
9 make the respective payments under Section VI within 30 days of the effective date
10 of this Consent Decree, then such Settling Defendant shall pay Interest on the
11 respective unpaid balance, commencing on the date that payment is due and accruing
12 through the date of payment. The Settling Defendants shall make all payments
13 required by this Paragraph in the manner described in Section VI, unless otherwise
14 directed in writing by EPA.

15 14. Stipulated Penalty.

16 a. In addition to the Interest required by Paragraph 13 (Interest on
17 Late Payments), if either of the Settling Defendants fails to remit its respective
18 payment to the United States required by Paragraphs 5 and 6 when due, then such
19 Settling Defendant also shall pay stipulated penalties to the United States of \$1,000
20 per day for each day that the payment is late.

21 b. Stipulated penalties are due and payable to the United States
22 within 30 days of the date of the demand for payment of the penalties by the United
23 States. All payments to the United States under this Paragraph shall be identified as
24 "stipulated penalties" and shall be made by certified or cashier's check made payable
25 to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the
26 check, shall reference the name and address of the party making payment, the Site
name, the EPA Region and Site Spill Number 0927, USAO File Number
2001V02670, and DOJ Case Number 90-11-2-354, and shall be sent to: EPA

1 Region IX, Attn: Superfund Accounting, P.O. Box 360863M, Pittsburgh, PA 15251.

2 c. In addition to the Interest required by Paragraph 13 (Interest on
3 Late Payments), if either of the Settling Defendants fails to remit its respective
4 payment to DTSC required by Paragraphs 10 and 11 when due, then such Settling
5 Defendant also shall pay stipulated penalties to DTSC of \$1,000 per day for each day
6 that the payment is late.

7 d. Stipulated penalties are due and payable to DTSC within 30 days
8 of the date of the demand for payment of the penalties by DTSC. All payments to
9 DTSC under this Paragraph shall be identified as "stipulated penalties" and shall be
10 made by certified or cashier's check made payable to Cashier, California Department
11 of Toxic Substances Control. The check, or a letter accompanying the check, shall
12 reference the name and address of the party making payment and the Site name, and
13 shall be sent to:

14 Department of Toxic Substances Control
15 Accounting/Cashier
16 1001 I Street, 4th Floor
P.O. Box 806
Sacramento, CA 95812-0806

17 e. At the time of payment of any stipulated penalties to the United
18 States, Settling Defendants shall send copies of check(s), and any accompanying
19 transmittal letter(s), to the United States as provided in Section XV (Notices and
20 Submissions), the EPA Project Coordinator, and the Superfund Accounting Office
21 of EPA Region IX. At the time of payment of any stipulated penalties to DTSC,
22 Settling Defendants shall send copies of check(s), and any accompanying transmittal
23 letter(s) to DTSC as provided in Section XV (Notices and Submissions).

24 f. Penalties shall accrue as provided in this Paragraph regardless of
25 whether EPA or DTSC has notified Settling Defendants of the violation or made a
26 demand for payment, but need only be paid upon demand. All penalties shall begin

1 to accrue on the day after payment is due and shall continue to accrue through the
2 date of payment. Nothing herein shall prevent the simultaneous accrual of separate
3 penalties for separate violations of this Consent Decree.

4 15. If the United States or DTSC brings an action to enforce this Consent
5 Decree against a Settling Defendant, Settling Defendant shall reimburse the
6 Plaintiff(s) bringing the action for all costs incurred in such action, including but not
7 limited to costs of attorney time.

8 16. Payments made under this Section shall be in addition to any other
9 remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure
10 to comply with the requirements of this Consent Decree.

11 17. Notwithstanding any other provision of this Section, the United States
12 may, in its unreviewable discretion, waive payment of any portion of the stipulated
13 penalties that have accrued to the United States pursuant to this Consent Decree.
14 Notwithstanding any other provision of this Section, DTSC may, in its unreviewable
15 discretion, waive payment of any portion of the stipulated penalties that have
16 accrued to DTSC pursuant to this Consent Decree. Payment of stipulated penalties
17 shall not excuse Settling Defendants from payment as required by Section VI or
18 from performance of any other requirements of this Consent Decree.

19 **VIII. COVENANTS NOT TO SUE BY PLAINTIFFS**

20 18. In consideration of the payments that will be made by the Settling
21 Defendants under the terms of this Consent Decree, and except as specifically
22 provided in Section IX (General Reservation of Rights), the United States covenants
23 not to sue or to take administrative action against any of the Settling Defendants,
24 pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, and
25 Section 7003 of RCRA, 42 U.S.C. § 6973, for performance of the Work and
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1 recovery of Response Costs. Except as specifically provided in Section IX (General
2 Reservation of Rights), DTSC covenants not to sue or take administrative action
3 against any of the Settling Defendants, pursuant to Sections 106 and 107 of
4 CERCLA, 42 U.S.C. §§ 9606 and 9607, and Section 7003 of RCRA, 42 U.S.C.
5 § 6973, and their respective state law counterparts, for performance of the Work and
6 recovery of DTSC Response Costs. With respect to each Settling Defendant's
7 present and future liability, these covenants not to sue shall take effect upon receipt
8 by EPA and DTSC of the respective amounts required by Section VI (Payment of
9 Response Costs) and any amount due under Section VII (Failure to Comply with
10 Consent Decree) from such Settling Defendant. With respect to each Settling
11 Defendant, these covenants not to sue are conditioned upon the satisfactory
12 performance by such Settling Defendant of its respective obligations under this
13 Consent Decree. With respect to each Settling Defendant, these covenants not to sue
14 are also conditioned upon the veracity and completeness of the Financial
15 Information provided to EPA by such Settling Defendant. If the Financial
16 Information of any Settling Defendant is subsequently determined by EPA to be
17 false or, in any material respect, inaccurate, such Settling Defendant shall forfeit all
18 payments made pursuant to this Consent Decree and these covenants not to sue and
19 the contribution protection in Section XI (Effect of Settlement; Contribution
20 Protection) shall be null and void as to that Settling Defendant. Such forfeiture shall
21 not constitute liquidated damages and shall not in any way foreclose the United
22 States' right to pursue any other causes of action arising from such Settling
23 Defendant's false or materially inaccurate information. These covenants not to sue
24 extend only to Settling Defendants and do not extend to any other person.
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1 **IX. GENERAL RESERVATION OF RIGHTS**

2 19. The covenants not to sue set forth in Paragraph 18 do not pertain to any
3 matters other than those expressly specified therein. The United States and DTSC
4 reserve, and this Consent Decree is without prejudice to, all rights against each
5 Settling Defendant with respect to all other matters, including but not limited to, the
6 following:

7 (1) claims based on a failure by any Settling Defendant to meet a
8 requirement of this Consent Decree;

9 (2) liability arising from the past, present, or future disposal, release,
10 or threat of release of hazardous substances, pollutants, contaminants, or solid wastes
11 outside of the BPOU Area;

12 (3) liability for disposal of hazardous substances, pollutants,
13 contaminants, or solid wastes at the BPOU Area by any Settling Defendant after
14 signature of this Consent Decree by such Settling Defendant, other than as provided
15 in the ROD, as supplemented by the ESD, the Remedial Action, or otherwise ordered
16 by EPA;

17 (4) liability for damages for injury to, destruction of, or loss of
18 natural resources, and for the costs of any natural resource damage assessments;

19 (5) criminal liability; and

20 (6) liability for additional operable units at the BPOU Area or the
21 Site, or a final response action, including but not limited to the final ROD for the
22 BPOU Area.

23 20. Notwithstanding any other provision of this Consent Decree, the United
24 States and DTSC retain all authority and reserve all rights, and this Consent Decree
25 is without prejudice to, the right to reinstitute or reopen this action, or to commence
26 a new action seeking relief other than as provided in this Consent Decree from a

1 Settling Defendant, if the Financial Information provided, or the financial
2 certification made in Paragraph 36(b), by such Settling Defendant is false or, in an
3 material respect, inaccurate.

4 **X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

5 21. Settling Defendants hereby covenant not to sue and agree not to assert
6 any claims or causes of action against the United States or DTSC, or their
7 contractors or employees, with respect to the Site or this Consent Decree, including
8 but not limited to:

9 a. any direct or indirect claim for reimbursement from the
10 Hazardous Substance Superfund (established pursuant to the Internal Revenue Code,
11 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113, 42
12 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

13 b. any claims arising out of response actions at or in connection with
14 the BPOU Area, including any claims under the United States Constitution, the
15 California Constitution, the Tucker Act, 42 U.S.C. § 1491, the Equal Access to
16 Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

17 c. any claims against the United States, including any department,
18 agency or instrumentality of the United States, under CERCLA Sections 107 or 113,
19 42 U.S.C. §§ 9607 or 9613, related to the BPOU Area;

20 d. any claims against the State of California, including any
21 department, agency, or instrumentality of the State of California, under CERCLA
22 Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, related to the BPOU Area; or

23 e. any claims arising out of response activities at the BPOU Area,
24 including claims based on EPA's and DTSC's selection of response actions,
25 oversight of response activities or approval of plans for such activities.

1 22. Nothing in this Consent Decree shall be deemed to constitute approval
2 or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42
3 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

4 23. Settling Defendants hereby agree to waive all claims or causes of action
5 that they may have against any person other than Settling Defendants' insurance
6 carriers and potentially responsible parties who have received in the past or receive
7 in the future special notice from EPA in connection with the BPOU Area and who
8 are not signatories to this Consent Decree, for damages or costs of any kind relating
9 to response actions and costs incurred at the BPOU Area, including without
10 limitation, claims under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and
11 9613, common law claims of negligence, contribution, equitable indemnity and
12 restitution, and claims under any other federal, state or local statutory or common
13 law. This waiver shall not apply with respect to any defense, claim, or cause of
14 action that a Settling Defendant may have against any person if such person asserts
15 a claim or cause of action relating to the BPOU Area against such Settling
16 Defendant.

17 **XI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

18 24. Except as provided in Paragraph 23, above, nothing in this Consent
19 Decree shall be construed to create any rights in, or grant any cause of action to, any
20 person not a Party to this Consent Decree. The preceding sentence shall not be
21 construed to waive or nullify any rights that any person not a signatory to this
22 Decree may have under applicable law. Except as provided in Paragraph 23, above,
23 each of the Parties expressly reserves any and all rights (including, but not limited
24 to, any right to contribution), defenses, claims, demands, and causes of action which
25 each Party may have with respect to any matter, transaction, or occurrence relating
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1 in any way to the Site against any person not a Party hereto.

2 25. The Parties agree, and by entering this Consent Decree this Court finds,
3 that the Settling Defendants are entitled, as of the effective date of this Consent
4 Decree, to protection from contribution actions or claims as provided by CERCLA
5 Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent
6 Decree. For purposes of this Paragraph, "matters addressed" shall mean: (a) the
7 Work; (b) all response costs incurred prior to the entry of this Consent Decree by the
8 United States, DTSC, or any other person at or in connection with the BPOU Area;
9 and (c) all response costs related to the implementation or oversight of the Work to
10 be incurred after the entry of this Consent Decree by the United States, DTSC, or any
11 other person at or in connection with the BPOU Area. The "matters addressed" in
12 this Consent Decree do not include those response costs or response actions as to
13 which the United States or DTSC has reserved its rights under this Consent Decree
14 (except for claims for failure to comply with this Decree), in the event that the
15 United States or DTSC asserts rights against Settling Defendants coming within the
16 scope of such reservations.

17 26. The Settling Defendants agree that, with respect to any suit or claim for
18 contribution brought by them for matters related to this Consent Decree, they will
19 notify the United States and DTSC in writing no later than 60 days prior to the
20 initiation of such suit or claim.

21 27. The Settling Defendants also agree that, with respect to any suit or
22 claim for contribution brought against them for matters related to this Consent
23 Decree, they will notify in writing the United States and DTSC within 10 days of
24 service of the complaint on them. In addition, Settling Defendants shall notify the
25 United States and DTSC within 10 days of service or receipt of any Motion for
26 Summary Judgment and within 10 days of receipt of any order from a court setting

1 a case for trial.

2 28. In any subsequent administrative or judicial proceeding initiated by the
3 United States or DTSC for injunctive relief, recovery of response costs, or other
4 relief relating to the Site, Settling Defendants shall not assert, and may not maintain,
5 any defense or claim based upon the principles of waiver, res judicata, collateral
6 estoppel, issue preclusion, claim splitting, or other defenses based upon any
7 contention that the claims raised by the United States or DTSC in the subsequent
8 proceeding were or should have been brought in the instant case; provided, however,
9 that nothing in this Paragraph affects the enforceability of the covenants not to sue
10 set forth in Section VIII (Covenants Not to Sue by Plaintiffs).

11 **XII. ACCESS**

12 29. If any of the Settling Defendants own or control any property where
13 access is needed to implement response activities at the Site, then, commencing on
14 the date of lodging of the Consent Decree, such Settling Defendants shall provide
15 the United States, the State, and their representatives, including EPA and its
16 contractors, with access at all reasonable times to such property for the purpose of
17 conducting any response activity related to the Site, including, but not limited to, the
18 following activities:

- 19 a. Monitoring, investigation, removal, remedial or other activities
20 at the Site;
- 21 b. Verifying any data or information submitted to the United States
22 or the State;
- 23 c. Conducting investigations relating to contamination at or near the
24 Site;
- 25 d. Obtaining samples;
- 26

1 e. Assessing the need for, planning, or implementing additional
2 response actions at or near the Site;

3 f. Inspecting and copying records, operating logs, contracts, or other
4 documents maintained or generated by Settling Defendants or their agents,
5 consistent with Section XIII (Access to Information); and

6 g. Assessing Settling Defendants' compliance with this Consent
7 Decree.

8 30. Notwithstanding any provision of this Consent Decree, the United
9 States and the State of California retain all of their access authorities and rights,
10 including enforcement authorities related thereto, under CERCLA, RCRA, and any
11 other applicable statute or regulations.

12 **XIII. ACCESS TO INFORMATION**

13 31. Settling Defendants shall provide to EPA and DTSC, upon request,
14 copies of all documents and information within their possession or control or that of
15 their contractors or agents relating to activities at the Site or to the implementation
16 of this Consent Decree, including, but not limited to, sampling, analysis, chain of
17 custody records, manifests, trucking logs, receipts, reports, sample traffic routing,
18 correspondence, or other documents or information related to the Site.

19 32. **Confidential Business Information and Privileged Documents.**

20 a. Settling Defendants may assert business confidentiality claims
21 covering part or all of the documents or information submitted to Plaintiffs under
22 this Consent Decree to the extent permitted by and in accordance with Section
23 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b).
24 Documents or information determined to be confidential by EPA will be afforded the
25 protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality
26

1 accompanies documents or information when they are submitted to EPA and DTSC,
2 or if EPA has notified Settling Defendants that the documents or information are not
3 confidential under the standards of Section 104(e)(7) of CERCLA, or 40 C.F.R. Part
4 2, Subpart B, the public may be given access to such documents or information
5 without further notice to Settling Defendants.

6 b. The Settling Defendants may assert that certain documents,
7 records and other information are privileged under the attorney-client privilege or
8 any other privilege recognized by federal law. If the Settling Defendants assert such
9 a privilege in lieu of providing documents, they shall provide the Plaintiffs with the
10 following: (1) the title of the document, record, or information; (2) the date of the
11 document, record, or information; (3) the name and title of the author of the
12 document, record, or information; (4) the name and title of each addressee and
13 recipient; (5) a description of the contents of the document, record, or information;
14 and (6) the privilege asserted by Settling Defendants. However, no documents,
15 reports or other information created or generated pursuant to the requirements of the
16 Consent Decree shall be withheld on the grounds that they are privileged.

17 33. No claim of confidentiality shall be made with respect to any data,
18 including, but not limited to, all sampling, analytical, monitoring, hydrogeologic,
19 scientific, chemical, or engineering data, or any other documents or information
20 evidencing conditions at or around the Site.

21 **XIV. RETENTION OF RECORDS**

22 34. Until 10 years after the Settling Defendants' receipt of EPA's
23 Certification of Completion, each Settling Defendant shall preserve and retain all
24 records and documents now in its possession or control, or which come into its
25 possession or control, that relate in any manner to response actions taken at the Site
26

1 or liability of any person for response actions conducted and to be conducted at the
2 Site, regardless of any corporate retention policy to the contrary.

3 35. At the conclusion of this document retention period, Settling
4 Defendants shall notify the United States and DTSC at least 90 days prior to the
5 destruction of any such records or documents, and, upon request by the United States
6 or DTSC, Settling Defendants shall deliver any such records or documents to EPA
7 or DTSC. The Settling Defendants may assert that certain documents, records and
8 other information are privileged under the attorney-client privilege or any other
9 privilege recognized by federal law. If the Settling Defendants assert such a
10 privilege, they shall provide the Plaintiffs with the following: (1) the title of the
11 document, record, or information; (2) the date of the document, record, or
12 information; (3) the name and title of the author of the document, record, or
13 information; (4) the name and title of each addressee and recipient; (5) a description
14 of the subject of the document, record, or information; and (6) the privilege asserted
15 by Settling Defendants. However, no documents, reports or other information
16 created or generated pursuant to the requirements of the Consent Decree shall be
17 withheld on the grounds that they are privileged.

18 36. Each Settling Defendant hereby certifies individually that, to the best
19 of its knowledge and belief, after thorough inquiry, it has:

20 a. not altered, mutilated, discarded, destroyed or otherwise disposed
21 of any records, documents or other information relating to its potential liability
22 regarding the BPOU Area since notification of potential liability by the United States
23 or DTSC or the filing of suit against it regarding the BPOU Area, and that it has fully
24 complied with any and all EPA requests for information pursuant to Sections 104(e)
25 and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of
26 RCRA, 42 U.S.C. § 6927; and

1 b. submitted to EPA Financial Information that fairly, accurately,
2 and materially sets forth its financial circumstances, and that those circumstances
3 have not materially changed between the time the Financial Information was
4 submitted to EPA and the time such Settling Defendant executes this Consent
5 Decree.

6 **XV. NOTICES AND SUBMISSIONS**

7 37. Whenever, under the terms of this Consent Decree, written notice is
8 required to be given or a report or other document is required to be sent by one
9 Party to another, it shall be directed to the individuals at the addresses specified
10 below, unless those individuals or their successors give notice of a change to the
11 other Parties in writing. All notices and submissions shall be considered effective
12 upon receipt, unless otherwise provided. Written notice as specified herein shall
13 constitute complete satisfaction of any written notice requirement of the Consent
14 Decree with respect to the United States, EPA, DTSC, and the Settling
15 Defendants, respectively.

16 As to the United States:

17 Chief, Environmental Enforcement Section
18 Environment and Natural Resources Division
19 U.S. Department of Justice
20 P.O. Box 7611
21 Ben Franklin Station
22 Washington, D.C. 20044
23 Re: DJ # 90-11-2-354

24 and

25 Robert D. Mullaney
26 Trial Attorney
27 Environmental Enforcement Section
28 U.S. Department of Justice
29 301 Howard Street, Suite 1050
30 San Francisco, CA 94105

31 As to EPA:

1 Lewis C. Maldonado, ORC-3
2 Assistant Regional Counsel
3 United States Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

4 and

5 Wayne Praskins
6 EPA Project Coordinator
United States Environmental Protection Agency
75 Hawthorne Street (SFD-7-3)
San Francisco, CA 94105

8 As to DTSC:

9 Jacklyn Spizman
10 DTSC Project Coordinator
Department of Toxic Substances Control
5796 Corporate Avenue
11 Cypress, CA 90630

12 and

13 Ann Rushton
14 Office of the Attorney General
300 South Spring Street, Suite 500
Los Angeles, CA 90013

15
16 As to the Settling Defendants:

17 Jeffrey Clow
18 Screwmatic, Inc.
925 West 1st Street
Azusa, CA 91702-0518

19 and

20 Sherman Mitchell
21 J.H. Mitchell & Sons Distributors, Inc.
14515 Joanbridge Street
P.O. Box 446
22 Baldwin Park, CA 91706

23 with a copy to

24 R. Christopher Locke
25 Farella Braun + Martel LLP
Russ Building, 30th Floor
26 235 Montgomery Street

1 San Francisco, CA 94104

2
3 **XVI. EFFECTIVE DATE**

4 38. The effective date of this Consent Decree shall be the date upon
5 which this Consent Decree is entered by the Court, except as otherwise provided
6 herein.

7 **XVII. RETENTION OF JURISDICTION**

8 39. This Court retains jurisdiction over this matter for the purpose of
9 interpreting and enforcing the terms of this Consent Decree.

10 **XVIII. INTEGRATION/APPENDICES**

11 40. This Consent Decree and its appendices constitute the final, complete,
12 and exclusive agreement and understanding among the Parties with respect to the
13 settlement embodied in this Consent Decree and supersede all prior agreements and
14 understandings, whether oral or written. No other document, nor any representation,
15 inducement, agreement, understanding, or promise, constitutes any part of this
16 Decree or the settlement it represents, nor shall it be used in construing the terms of
17 this Decree. The following appendices are attached to and incorporated into this
18 Consent Decree:

19 "Appendix A" is the map of the BPOU Area;

20 "Appendix B" is a list of the financial documents submitted to EPA by
21 Settling Defendants;

22 "Appendix C" is a copy of the ROD; and

23 "Appendix D" is a copy of the ESD.
24
25
26

1 **XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

2 41. This Consent Decree shall be lodged with the Court for a period of
3 not less than 30 days for public notice and comment. The United States reserves
4 the right to withdraw or withhold its consent if the comments regarding the
5 Consent Decree disclose facts or considerations which indicate that the Consent
6 Decree is inappropriate, improper, or inadequate. Settling Defendants consent to
7 the entry of this Consent Decree without further notice.

8 42. If for any reason the Court should decline to approve this Consent
9 Decree in the form presented, this agreement is voidable at the sole discretion of
10 any Party and the terms of the agreement may not be used as evidence in any
11 litigation between the Parties.

12 **XX. SIGNATORIES/SERVICE**

13 43. Each undersigned representative of a Settling Defendant to this Consent
14 Decree, the Assistant Attorney General for the Environment and Natural Resources
15 Division of the United States Department of Justice (or his delegate), and the Deputy
16 Attorney General of the California Department of Justice certifies that he or she is
17 fully authorized to enter into the terms and conditions of this Consent Decree and to
18 execute and legally bind such Party to this document.

19 44. Each Settling Defendant hereby agrees not to oppose entry of this
20 Consent Decree by this Court or to challenge any provision of this Consent Decree
21 unless the United States has notified the Settling Defendants in writing that it no
22 longer supports entry of the Consent Decree.

23 45. Each Settling Defendant shall identify, on the attached signature page,
24 the name, address and telephone number of an agent who is authorized to accept
25 service of process by mail on behalf of that Party with respect to all matters arising
26

1 including, but not limited to, service of a summons.

2
3 **XXI. FINAL JUDGMENT**

4 46. Upon approval and entry of this Consent Decree by the Court, this
5 Consent Decree shall constitute a final judgment between and among the United
6 States and the Settling Defendants and between and among DTSC and the Settling
7 Defendants. The Court finds that there is no just reason for delay and therefore
8 enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.
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10

11 Dated: 5/3/02

Christina A. Smyth
12 United States District Judge
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1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
2 United States and State of California Department of Toxic Substances Control v. J.H.
3 Mitchell & Sons Distributors, Inc., and Screwmatic, Inc., relating to the BPOU Area.

4
5 FOR THE UNITED STATES OF AMERICA

6
7 Date: 1.23.02

Tom Sansonetti

8 Thomas L. Sansonetti
9 Assistant Attorney General
10 Environment and Natural Resources
11 Division
12 Washington, D.C. 20530


13
14 Date: April 10, 2002

Robert D. Mullaney

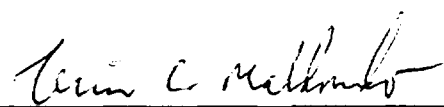
15 Robert D. Mullaney
16 Trial Attorney
17 Environmental Enforcement Section
18 Environment and Natural Resources
19 Division
20 U.S. Department of Justice
21 301 Howard Street, Suite 1050
22 San Francisco, California 94105
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Date: April 1, 2002


Jane Diamond
Acting Director, Superfund Division
Region IX
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

Date: 4-1-02


Lewis C. Maldonado
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region IX
San Francisco, CA 94150

FOR THE STATE OF CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES
CONTROL

Date: 2/21/02

Barbara Coler

Barbara Coler
Chief, Statewide Cleanup
Operations Division
Department of Toxic Substances
Control

Date: 2-22-02

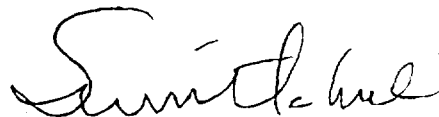
Ann Rushton

Ann Rushton
Deputy Attorney General
California Department of Justice
300 South Spring Street, Suite 500
Los Angeles, CA 90013

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the name
2 of United States and State of California Department of Toxic Substances Control
3 J.H. Mitchell & Sons Distributors, Inc., and Screwmatic, Inc., relating to the RFP
4 Area.

5
6 FOR J.H. MITCHELL & SON DISTRIBUTORS, INC.

7 Date: 12-4-01



8 Sherman Mitchell
9 Secretary-Treasurer
10 J.H. Mitchell & Sons Distributors, Inc.
11 14515 Joanbridge Street
12 P.O. Box 446
13 Baldwin Park, CA 91706

14 Agent Authorized to Accept Service on Behalf of Above-signed Party

15 R. Christopher Locke
16 Farella Braun + Martel LLP
17 Russ Building, 30th Floor
18 235 Montgomery Street
19 San Francisco, CA 94104
20 Tel: (415) 954-4400
21 Fax: (415) 954-4480

22 Attorneys for J.H. Mitchell & Sons Distributors, Inc.

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the
 2 matter of United States and State of California Department of Toxic Substances
 Control v. J.H. Mitchell & Sons Distributors, Inc., and Screwmatic, Inc., related
 3 to the BPOU Area.

4 FOR SCREWMATIC, INC.

5
 6 Date: 12-10-01

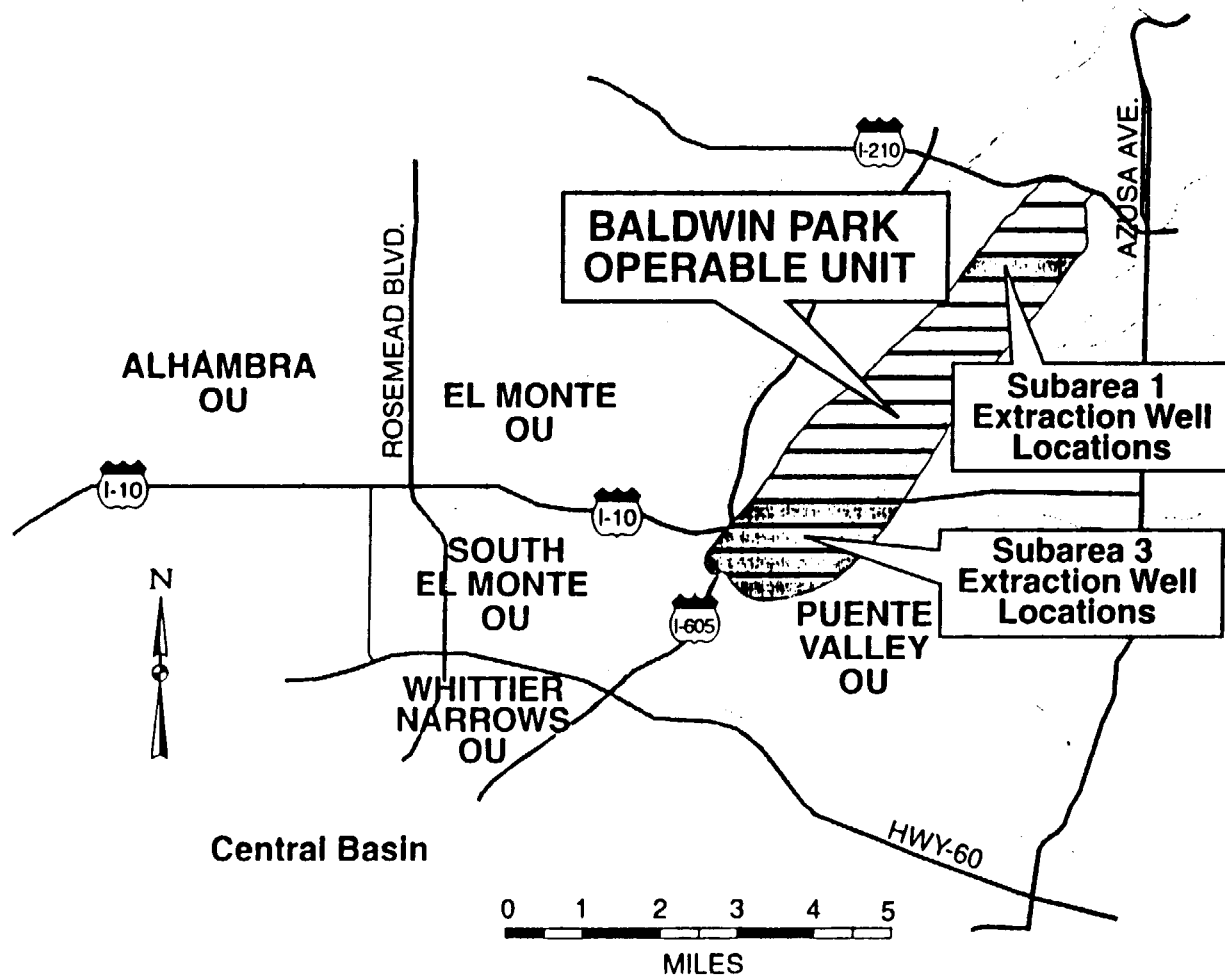
Robert Clow

7 Robert Clow
 8 General Manager
 9 Screwmatic, Inc.
 925 West 1st Street
 Azusa, CA 91702-0518

10 Agent Authorized to Accept Service on Behalf of Above-signed Party:

11 R. Christopher Locke
 12 Farella Braun + Martel LLP
 13 Russ Building, 30th Floor
 235 Montgomery Street
 San Francisco, CA 94104
 14 Tel: (415) 954-4400
 Fax: (415) 954-4480

15 Attorneys for Screwmatic, Inc.



Appendix A: Location map of the Baldwin Park Operable Unit

ABILITY TO PAY ANALYSIS: Documents reviewed
San Gabriel Valley, Baldwin Park Operable Unit

Entities:

J.H. Mitchell and Sons Distributors, Inc.
Screwmatic, Inc.

Documents:

Correspondence from R. Christopher Locke, attorney, to EPA
Compiled financial statements
Financial institution account statements
IRS Form 1120, U.S. Corporation Income Tax Returns
Available General and Excess Liability Coverage (table and timeline)
Articles of Incorporation
Public records database searches

APPENDIX B